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## RECENT CASES.

## CRIMINAL LAW.

*Indeterminate Punishment—Constitutional Law.*—*Miller v. State*, 49 N. E. (Ind.) 894. An Indiana act provides that in cases of felony, where the defendant is between certain years, the jury shall merely find his age and the crime of which he is guilty, and that the power of fixing the amount of punishment shall be in the hands of managers of the reformatory to which the criminal is sentenced. *Held*, that this does not deprive the accused of a trial by jury. *Held*, further, that the act is not unconstitutional as allowing persons charged with executive duties to exercise judicial functions, since the power conferred on the managers is purely administrative.

*Second Offense—Evidence.*—*People v. Sickles*, 50 N. Y. Supp. 377. A New York law provides that conviction for a second offense shall be punishable more heavily than for the first. *Held*, that if a person is indicted under this law the first offense must be proved at the trial, although it is admitted before the impanelling of the jury since its proof is a material part of the allegation. The introduction of evidence of the first offense by the state is not contrary to the rule preventing evidence of character to be introduced except by accused.

*Compounding a Misdemeanor.*—*State v. Carver*, 39 Atl. (N. H.) 973. Defendant, for thirty dollars, agreed in writing "to withdraw all further action against F. for illegal sale of liquor," in contravention of New Hampshire statutes and destroyed the evidence he had thereof. *Held*, that compounding a misdemeanor is an offense at common law and that a person may be convicted thereof, "though no offense liable to a penalty has been committed by the party from whom the reward is taken."

## COPYRIGHT AND TRADE-MARKS.

*Copyright—Publication—Depositing Copy in Library.*—*Jewelers' Mercantile Agency v. Jewelers Weekly Pub. Co.*, 49 N. E. (N. Y.) 872. Plaintiff furnished book relating to his trade to all who cared to subscribe under the contract that the books were only loaned, the title remaining in the plaintiff, and were to be returned at a fixed time. Plaintiff also deposited two copies of the book with the Librarian of Congress. Defendant used part of the material in the book. Plaintiff sued to enjoin on the ground that the book had never been published under the common law meaning of the term. *Held*, that in issuing the books to the subscribers the plaintiff had lost his exclusive property in it and that this constituted a publication. The deposit of two copies with the Librarian was also held to be a publication, although no copyright was secured.

*Trade-mark—"Royal" may show Origin and Proprietorship—Abandonment.*—*Raymond v. Royal Baking Powder Co.*, 85 Fed. Rep. 231, affirming *Powder Co. v. Raymond*, 70 Fed. Rep. 376. A label or trade-mark which, though distinctive, contains false statements calculated to mislead cannot be the subject of property. While the word "royal" may be descriptive of quality, yet

when applied to the whole output of a concern it may show origin and proprietorship. The contention that it does not will not be favored when maintained by one manifestly seeking to impose his wares on the public as the manufacture of another. After abandoning for twenty-five years the use of a fraudulent label, one cannot resume it to impose his wares on the public as the manufacture of one who has established a legitimate business under a similar label.

*Basis of Right of Trade-mark—Priority—Use—Invention.*—*Tellow v. Tappan*, 85 Fed. Rep. 774. *Held*, that the right to the exclusive use of a trade-mark or device does not rest on absolute priority of use or invention, but on such continued use as to make it point out the origin or source of the particular goods.

## INSURANCE.

*Fire Insurance—Iron Safe Clauses—Books of Account—Substantial Compliance.*—*McNutt v. Virginia Fire and Marine Insurance Co.*, 45 S. W. Rep. (Tenn.) 61. Complainant held a fire insurance policy under which he was required to take an inventory at least once a year, and to keep a complete set of books, and to keep such books and inventory in an iron safe except during business hours; and which provided that failure to produce such books and inventory in case of a loss should constitute a bar to any recovery thereon. On the day before the fire complainant in taking a new inventory, in the same book with other inventories, inadvertently left the book out of the safe, and it, with current invoices, was destroyed. *Held*, in an action to recover on the policy, that when complainant produced duplicate invoices and showed beyond question the true status of his accounts and of his stock destroyed, he was entitled to recover, on the ground that he had shown a substantial compliance with every reasonable requirement of such policy. This case is at variance with *Laudman v. Insurance Co.*, 19 Ins. Law J., 572, where it is held, that this clause should be enforced, and that it was not a sufficient defense to show the custom of the insured to keep the books of his business in an iron safe as stipulated, but by accident or oversight on the particular occasion the precaution was omitted.

*Insurance—Increase of Hazard—Waiver of Forfeiture.*—*Alston v. Greenwich*, 29 S. E. (Ga.) 266.—An insurance policy contained the condition that policy would be void if the hazard should be increased by any means within the knowledge or control of the insured. A part of the insured store was rented to a tenant who largely increased the amount of hay stored therein. *Held*, Atchinson J. dissenting, that this constituted an increase of hazard, and that an inference to the contrary by the jury could not fairly be drawn. Also, the contract being valid, the policy could not be retained from the insured by the agent of the company. Therefore a delivery of the policy to the insured by the agent after loss was not a waiver of forfeiture for increase of hazard, though the agent had notice of the facts; neither was a partial appraisal of the loss a waiver.

## LIBEL AND SLANDER.

*Libel—Words Actionable per se.*—*American Book Co. v. Gates*, 85 Fed. Rep. 729. To publish of a corporation that the list of books in which it deals "contains some of the most disgraceful trash," that it puts out-of-date school